

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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KEVIN GRACE,

08 CIV 1889 (SHS)

Plaintiff,

-against-

ANSWER

ABRAHAM MATTHEWS, SEAN CARROLL
and RYDER TRUCK RENTAL,

Defendants.

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Defendant Sean Carroll, by his attorneys Murphy & Higgins LLP, answer the Complaint as follows:

As to First Cause of Action

1. Denies knowledge or information sufficient to form a belief as to the allegations in paragraphs "1", "2", "4", "5" and "6".
2. Admits the allegations in paragraph "3", "6", "7", "8", "9" and "10".
3. Denies the allegations in paragraph "8" in the form alleged, and refers all matters therein for judicial notice to the Court.
4. Denies the allegations in paragraphs "11", "12" and "13".

As to Second Cause of Action

5. Denies the allegations in paragraphs "15", "16" and "17".

As to Third Cause of Action

6. Admits the allegations in paragraph "19".
7. Denies the allegations in paragraph "20" and "21".

First Affirmative Defense

8. Plaintiff did not sustain a "serious injury" as defined in the New York Insurance Law.

Second Affirmative Defense

9. Plaintiff's injuries, if any, were due to his own negligence, assumption of risk, or culpable conduct.

Third Affirmative Defense

10. Any amounts plaintiff may recover will be offset in accordance with CPLR §4545.

Fourth Affirmative Defense

11. At the time of the alleged accident plaintiff and answering defendant were co-employees in the course of their employment.

12. Plaintiff's claims are therefore barred by New York Worker's Compensation Law §29(6).

Cross-Claim Against Abraham Matthews and Ryder Truck Rental

13. Any injuries sustained by plaintiff were due to the negligence, recklessness or other culpable conduct of defendants Abraham Matthews and Ryder Truck Rental, who are liable to answering defendant under the theories of common law contribution or indemnification.

WHEREFORE, the undersigned defendant demands judgment dismissing

this action, together with costs, disbursements and attorney's fees.

Dated: New Rochelle, New York
April 25, 2008

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